IN THE HIGH COURT OF DELHI

RSA No.201/2004

M/s. West Asia Exports & Imports Pvt. Ltd. ..... Appellant

! through: Mr.Vinod Kumar, Advocate

VERSUS

$ Shri Viswanath Nedungadi .....Respondent

^ through: Mr.Dharamvir Singh, Advocate

RESERVED ON: 29.11.2007

% DATE OF DECISION: 03.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. In the appeal, following substantial questions of law have been framed by the appellant :-

> "A. What amount of damages and for how much period can be awarded to any employee whose probation period of six months was not completed and his services were terminated?
>
> B. Can the damages of more than Rs.1,56,000/- be awarded in favour of a probationer employee whose services were terminated during the probation period?
>
> C. Whether the employee is entitled to grant of damages for unlimited period?

D. Whether the employee is entitled to damages w.e.f. the date of his termination of service despite the facts that the suit for grant of damages was instituted after more than two and a half years?"

2. As would be noted from the facts here-in-after noted, none of the questions framed arises for consideration. In fact the appellant has been roaming in the corridors of this Court in a most cavalier fashion. The order which is impugned, i.e. order dated 19.2.2004 has declined to condone the delay in filing a regular first appeal against the judgment dated 26.3.2001 and decree dated 1.6.2001 passed by the learned Civil Judge. As a consequence of not condoning the delay in filing the appeal, the appeal has been dismissed as time barred. Thus, even to a layman it would be apparent that issue which has to be decided in the second appeal is whether learned Appellate Judge was correct in holding that no sufficient cause was shown entitling the appellant to have the delay condoned.

3. In view of the fact that in the appeal no substantial question of law has been framed relating to the real issue which arises for consideration, I would have dismissed the appeal on this short ground but since consequences of not condoning delay is deprivation of a substantive right, I considered it appropriate to peruse the record and independently satisfy

myself whether sufficient cause was shown to the learned Appellate Judge when a belated appeal was filed, entitling appellant to have the delay condoned in filing the first appeal. Appellant had suffered a money decree passed by a learned Civil Judge vide judgment dated 26.3.2001. The decree was drawn up on 1.6.2001.

4. Appeal therefrom was to be filed before the learned Senior Civil Judge. The appellant filed an appeal in the Delhi High Court which was returned informing appellant that the appeal had to be filed before the learned Senior Civil Judge.

5. Appellant took back the appeal and filed the same in the appropriate court and along there with sought delay to be condoned in filing the appeal. It was stated in the application that pertaining to the judgment dated 23.1.2001 the decree was drawn up on 1.6.2001. That the appellant thought that the appeal had to be filed in the High Court. He thought that period of limitation was 90 days and accordingly applied for a certified copy of the judgment and decree on 10.7.2001. Certified copy of judgment and decree was made available on 12.7.2001. Appeal was filed in the Delhi High Court on 10.8.2001. It was listed for hearing on 20.8.2001 but was returned to be filed before the learned Senior Civil Judge. The appeal was filed on 27.8.2001.

6. The learned Appellate Court noted that the judgment was delivered on 26.3.2001 but the decree was prepared on 1.6.2001. Thus it was held that for purposes of appeal limitation would commence with effect from 2.6.2001.

7. Noting that in the application seeking delay to be condoned there was no averment as to what led the appellant to believe that the appeal could be filed in Delhi High Court, learned Appellate Court held that no case was made out to condone the delay in filing the appeal.

8. Before I deal with the reasoning of the first Appellate Court certain more facts pertaining to conduct of the appellant in the present appeal needs to be noted.

9. The instant appeal was filed on 26.5.2004. The appeal was returned by the registry with as many as 8 objections. Appellant was granted a week's time to re-file the appeal. Far from re-filing the appeal within a week, the appeal was re-filed on 20.8.2004. Not all objections were removed. The appeal was returned the very same day, i.e. 20.8.2004 informing appellant that all objections were not removed. The appeal was taken back and re-filed on 28.8.2004. Once again, all objections were not removed. Continued deficiencies which existed were pointed out to the appellant on 28.8.2004 itself. The appeal was thereafter properly filed on 3.9.2004. Thus, for

purposes of proper filing the instant appeal could well be taken to have filed on 3.9.2004.

10. Not only that. Reckoned as having been filed on 26.5.2004 the appeal in this court is admittedly delayed by 4 days.

11. In the month of August 2005 when said fact was brought to the notice of counsel for the appellant he filed an application under Section 5 of the Limitation Act praying that delay in filing the instant appeal be condoned. The said application was defective. It was returned by the registry for re-filing after removing objections. Till date, the appellant has not bothered to re-file the said application.

12. Afore-noted facts reveal a most callous approach. The negligence of the appellant borders on culpability. The conduct of the appellant does not show that the appellant is a bona fide litigant.

13. Further, as noted above the draftsman of the appeal is just not aware of the issue which has to be urged in the appeal. As noted above, questions of law sought to be projected relate to the merits of the judgment and decree passed by the learned Trial Judge whereas issue which has to be decided is whether appellant was entitled to have the delay condoned in filing the first appeal before the first Appellate

Judge.

14. The hierarchy of courts in Delhi is as under :-

(A) At the lowest level are civil Courts. The pecuniary jurisdiction of civil courts is upto Rs.3 lacs.

(B) Next above are the courts presided over by District and Additional District Judges.

(C) Next above is the High Court.

15. Appeals against judgment and decrees passed by Civil Judges are filed before the learned Senior Civil Judge which are assigned to different Additional District Judges for hearing.

16. This hierarchy of courts is known to one and all practitioners of law in Delhi.

17. On what basis was the appellant and/or its counsel misdirected in thinking that the first appeal against the judgment dated 26.3.2001 and the decree dated 1.6.2001 was to be filed in Delhi High Court has just not been explained either in the application filed by the appellant under Section 5 of the Limitation Act before the learned Additional District Judge or even in the instant appeal.

18. In the decision reported as AIR 1933 Lahore 568 *Uttam Chand Vs. Vishan Dass* it was held that a legal advisor's mistake to justify extension of limitation must be a bona fide one, i.e., it must be done with due care and attention. In the

decision reported as AIR 1938 Lahore *Shri Amrit Lal Vs. Phool Chand* a similar view was taken. It was held that a mistaken advice of counsel is not sufficient to justify extension of time being granted under Section 5 of the Limitation Act unless the advice was given in good faith, i.e. with due care and attention. Hon'ble Supreme Court expressed its view in the report published as AIR 1970 SC 1953 *Mata Din. V. A. Narayanan* be observed as under :-

> "The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way."

19. In the absence of any explanation or a statement either in the application seeking delay to be condoned or even in the instant appeal as to what misled the appellant or the counsel in filing the first appeal in this Court whereas the same ought to have been filed in the District Courts, an inevitable consequence has to be that the finding returned by the learned Appellate Judge has to be confirmed.

20. Before concluding I may express my anguish at the way in which appellant has conducted itself in the present appeal. As noted above, a defective appeal was filed in May, 2004. As against a week's time granted for delay to be

condoned in filing the appeal the appeal was re-filed after nearly 4 months and that too defective. Twice further it had to be returned for removing objections. The appellant has persisted with a callous approach towards the procedure of the law. Such a litigant is not entitled to any indulgence.

21. I am conscious of the fact that law requires every attempt to be made to interpret procedural laws in a manner that substantive rights are not nullified on technicalities but at the same time where it is apparent that a party repeatedly breaches procedural laws it forfeits the right to an equitable consideration for the reason delay itself defeats equity.

22. The appeal is dismissed.

23. No costs.

24. LCR be returned.

3rd December, 2007
vg

PRADEEP NANDRAJOG
(JUDGE)